

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Keyne Jean Villert	Team: Team # 3	CCRB Case #: 201402786	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 03/12/2014 1:00 AM	Location of Incident: Intersection of Avenue M and East 58th Street	Precinct: 63	18 Mo. SOL 9/12/2015	EO SOL 9/12/2015	
Date/Time CV Reported Wed, 03/12/2014 1:08 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 03/17/2014 1:59 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Michael Rios	23722	947677	063 PCT
2. POM Kenny Tucker	25322	941108	063 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Kenny Tucker	Discourtesy: PO Kenny Tucker spoke rudely to § 87(2)(b)	
B.POM Kenny Tucker	Abuse: PO Kenny Tucker frisked § 87(2)(b)	
C.POM Michael Rios	Abuse: PO Michael Rios frisked § 87(2)(b)	
D.POM Kenny Tucker	Force: PO Kenny Tucker used pepper spray against § 87(2)(b)	
E.POM Kenny Tucker	Abuse: PO Kenny Tucker arrested § 87(2)(b)	

Case Summary

- On March 12, 2014, at approximately 1:00 a.m., § 87(2)(b) was walking with his friends, § 87(2)(b) and § 87(2)(b) in the vicinity of the intersection of East 58th Street and Avenue M in Brooklyn. The full name or contact information of § 87(2)(b) are unknown to § 87(2)(b) the only civilian who cooperated with this investigation. At some point, two officers, identified via investigation as PO Kenny Tucker and PO Michael Rios from the 63rd Precinct, pulled over nearby § 87(2)(b) in an unmarked patrol car. Around that time, § 87(2)(b) dropped a paper plate, which he was using while eating pizza, onto the ground. The officers eventually exited the patrol car and approached § 87(2)(b). Thereafter, PO Tucker pulled § 87(2)(b) toward and against the patrol car. PO Tucker allegedly replied to § 87(2)(b) after she asked what was going on, “He littered, that’s what the fuck is going on” (**Allegation A**). The officers then allegedly frisked § 87(2)(b) including his pockets (**Allegations B and C**). § 87(2)(b) then provided his identification to PO Tucker who subsequently entered the patrol car, exited it, and then handcuffed him. § 87(2)(b) was arrested after PO Tucker requested a warrant check for § 87(2)(b) via phone or radio, which was conducted by PO Annette Grant, from the 63rd Precinct. Later, § 87(2)(b) attempted to give his property to § 87(2)(b) while being handcuffed, and PO Tucker pepper-sprayed him (**Allegation D**). § 87(2)(b) was later transported to the 63rd Precinct stationhouse and was eventually released with a summons for § 87(2)(b) and another for § 87(2)(b) (**Allegation E**).

Mediation, Civil and Criminal Histories

- This case was not eligible for mediation because § 87(2)(b) was planning on filing a lawsuit in regard to this incident.
- As of July 31, 2014, approximately a month and a half following the expiration of the filing deadline, § 87(2)(b) has not filed a notice of claim with the City of New York in regard to this incident (encl. N). On January 26, 2015, the undersigned investigator submitted to the New York City Office of the Comptroller a new inquiry about the status of any potential notice of claim filed in regard to this incident. To date, no response has been received and any such response will be added to the case file upon its receipt.

- § 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
- § 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian and Officer CCRB Histories

- There are no substantiated CCRB allegations against PO Rios or PO Tucker. PO Rios and PO Tucker have been members of the service for six and nine years, respectively. Neither PO Tucker nor PO Rios has previously been the subject of a frisk, use of pepper-spray, or arrest allegation. A discourtesy allegation, which was closed as complainant uncooperative, has previously been pled against PO Tucker (encl. B1-B2).
- § 87(2)(b) has not previously filed a CCRB complaint (encl. B4).

Civilian Statements

- **Victim: § 87(2)(b) (encl. E1-E4)**
 - § 87(2)(b) was § 87(2)(b) old at the time of the incident, is 6'1" tall, weighs 165lbs, and has brown hair and eyes.
 - § 87(2)(b) admitted to dropping the plate, from which he had been eating pizza, onto the ground. PO Tucker forcibly stopped him by placing § 87(2)(b) against the patrol car, at which point he and PO Rios frisked § 87(2)(b).
 - § 87(2)(b) provided his identification to PO Tucker who subsequently reentered the patrol car, exited it, handcuffed him behind his back, and informed him that he had open warrants for his arrest. § 87(2)(b) was eventually transported to the 63rd Precinct stationhouse and then released with two summonses.
 - After § 87(2)(b) was handcuffed, he repeatedly asked permission from the officers to give his property contained inside one of his back pockets to § 87(2)(b). § 87(2)(b) admitted that PO Tucker ordered him not to give the property away, and that he still attempted to do so despite PO Tucker's prior order. § 87(2)(b) stated that PO Tucker then pepper-sprayed him continuously for a minute and from a distance of a few inches. § 87(2)(b) admitted in his sworn statement that, prior to being pepper-sprayed, § 87(2)(b) was two feet away from him and was about to retrieve the property from him. § 87(2)(b) also explained in his sworn statement that he already had his property, which consisted of currency, in his hands before he was pepper-sprayed; however, he did not specify whether he had removed his hands from the pocket after he retrieved the property. However, § 87(2)(b) explained in his phone statement that PO Tucker repeatedly ordered him not to give his property away, that PO Tucker was also attempting to place him inside the patrol car immediately prior to pepper-spraying him, and that he was trying to take his currency out from his pocket when he was pepper-sprayed.
 - § 87(2)(b) did not allege that any officer used profanity or made a threat of arrest in his presence.
- **Complainant/Victim: § 87(2)(b) (encl. C1-C5 and D)**
 - § 87(2)(g) is a friend of § 87(2)(b).
 - When § 87(2)(b) asked the officers what was going on, PO Tucker replied, "He littered, that's what the fuck is going on."
 - PO Tucker then searched § 87(2)(b) and later informed him that he had an open warrant for his arrest. § 87(2)(b) did not detail the search. § 87(2)(b) asked why he was being arrested and refused to be placed inside the car by standing firm and holding his ground. Thereafter, PO Tucker pepper-sprayed § 87(2)(b). § 87(2)(b) made no mention that § 87(2)(b) attempted to give his property away.
 - § 87(2)(b) asked the officers for their names. Although the officers did not initially provide the requested information, they provided this information after § 87(2)(b) was pepper-sprayed and apprehended. When § 87(2)(b) walked up to the patrol car, right after § 87(2)(b) was pepper-sprayed, PO Rios ordered her to step back otherwise she would be arrested for "obstruction of justice."

NYPD Statements

- **Subject Officer: PO KENNY TUCKER (encl. F1-F6)**
 - § 87(2)(b) was forcibly stopped after he attempted to walk away from the officers after being asked for his identification. § 87(2)(b) eventually provided his identification. PO Tucker contacted his command and requested a warrant check for § 87(2)(b). PO Tucker was eventually informed that § 87(2)(b) had an open warrant for his arrest, and the officers then attempted to handcuff him. Thereafter, § 87(2)(b) started screaming and cursing and failed to place his hands behind his back when ordered to do so. § 87(2)(b) also resisted by tensing up and stiffening his body. § 87(2)(b) did not resist in any additional manner. At that point, PO Tucker pepper-sprayed § 87(2)(b) with two bursts over the span of a couple seconds in an effort to handcuff him.
 - As the officers were attempting to place § 87(2)(b) inside the patrol car, he resisted by stiffening his body and failing to enter the patrol car when ordered to do so, all while being handcuffed behind his back. Because § 87(2)(b) resisted being placed inside the patrol car, PO Tucker pepper-sprayed him once more.
 - PO Tucker mentioned that § 87(2)(b) attempted to give his property away; however, PO Tucker wouldn't allow him to do so due to the risk that the property becomes lost.
 - PO Tucker initially planned on issuing a summons to § 87(2)(b). § 87(2)(b) was frisked after he was handcuffed and incident to his arrest. PO Tucker did not remember § 87(2)(b) being frisked prior to that time. PO Tucker determined at the stationhouse that § 87(2)(b) did not have any open warrant for his arrest and then released him with two summonses.
 - PO Tucker denied having stated, "He littered, that's what the fuck is going on."
- **Subject Officer: PO MICHAEL RIOS (encl. G1-G4)**
 - The officers initially planned on issuing a summons to § 87(2)(b) for littering; however, he refused to provide his identification to them upon request. Thereafter, the officers attempted to handcuff § 87(2)(b).
 - § 87(2)(b) resisted arrest by moving his body away from the officers, flailing his arms, cursing, and yelling. § 87(2)(b) may have pushed PO Tucker during the struggle. At that point, PO Tucker pepper-sprayed § 87(2)(b) once with a burst of less than two seconds. PO Rios estimated that PO Tucker was less than a foot away from § 87(2)(b) during the struggle. The officers then frisked § 87(2)(b) incident to his arrest, and handcuffed him.
 - § 87(2)(b) identification was retrieved at the stationhouse. PO Rios did not know whether § 87(2)(b) has an open warrant for his arrest.
 - PO Rios did not remember hearing PO Tucker use the expletive "fuck" during the incident.

Potential Issues

- On April 9, and 23, 2014, § 87(2)(b) missed her scheduled appointments at the CCRB. Between July 7, and 10, 2014, the undersigned investigator reached out to § 87(2)(b).

via mail and phone, but was unsuccessful in his attempts to reschedule her missed appointments or obtain additional information from her.

- On July 15, 2014, the undersigned investigator was informed by a police administrative aide from the 63rd Precinct that PO Tucker was on line-of-duty leave without a set return date.
- On January 13, 2015, the undersigned investigator was finally informed that PO Tucker had returned from his leave and had been reporting to his command, and subsequently interviewed PO Tucker on January 20, 2015.

Police Documents

- The Event summary and the CD for the corresponding 911 call indicate that § 87(2)(b) called 911 and reported that § 87(2)(b) was being stopped at 1:05 a.m. on the date of the incident. § 87(2)(b) then reported that § 87(2)(b) was being pepper-sprayed at 1:13 a.m. § 87(2)(b) did not mention § 87(2)(b) being frisked or searched at the time of the call (encl. J1-J2).
- The Management Information System Division warrant check print-out indicates that PO Grant conducted a warrant check for § 87(2)(b) on the date of the incident, at 1:07 a.m. The print-out further indicates that § 87(2)(b) did not have any open warrant listed for him with his date of birth. However, the print-out also indicates that a person by the same name, who was born just a few days after § 87(2)(b) had an open warrant for his arrest (encl. H1-H3).
- The summonses, issued by PO Tucker, indicate that § 87(2)(b) was charged with § 87(2)(b) and § 87(2)(b). The summonses also indicates that § 87(2)(b) disposed of a paper plate onto a public sidewalk, and that he screamed, cursed, and refused to obey a lawful order, with intent to create a hazardous or offensive situation (encl. F4).

Findings and Recommendations

Explanation of Subject Officers Identification

PO Rios and PO Tucker admitted to stopping and apprehending § 87(2)(b) PO Tucker admitted to pepper-spraying § 87(2)(b)

Allegation Not Pleaded

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation A – Discourtesy: PO Kenny Tucker spoke rudely to § 87(2)(b)

§ 87(2)(b) stated that, as the officers initiated the forcible stop, she asked them what was going on. § 87(2)(b) alleged that PO Tucker replied with, “He littered, that’s what the fuck is going on” (encl. D). § 87(2)(b) failed to cooperate with this investigation. § 87(2)(b) made no mention of any officer using profanity during the incident (encl. E1-E4).

PO Tucker denied having stated, “He littered, that’s what the fuck is going on” (encl. F5-F6). PO Rios did not remember hearing PO Tucker use the expletive “fuck” during the incident (encl. G3-G4).

§ 87(2)(g)

Allegation B – Abuse of Authority: PO Kenny Tucker frisked § 87(2)(b)

Allegation C – Abuse of Authority: PO Michael Rios frisked § 87(2)(b)

§ 87(2)(b) stated that he was first forcibly stopped, then frisked by PO Tucker and PO Rios, and that the officers then requested his identification. § 87(2)(b) added that thereafter, the officers informed him that he had open warrants for his arrest and then arrested him. At the time of his phone statement, § 87(2)(b) did not allege that he had been frisked prior to providing his identification or being arrested (encl. E1-E4).

Although § 87(2)(b) was uncooperative with this investigation, and thus failed to provide a sworn statement about the incident, she provided a phone statement. § 87(2)(b) explained that the officers accused § 87(2)(b) of littering, searched him, and then informed him that he had an open warrant, at which point PO Tucker handcuffed him. § 87(2)(b) did not detail the alleged search (encl. D).

PO Tucker stated that he initially planned on issuing a summons to § 87(2)(b). PO Tucker added that § 87(2)(b) started walking away subsequent to his initial request for identification. PO Tucker explained that § 87(2)(b) eventually handed him the identification, at which point he conducted a warrant check through his command and that he was incorrectly informed that § 87(2)(b) had an open warrant for his arrest. PO Tucker did not remember whether § 87(2)(b) was frisked prior to his arrest; however, he remembered that § 87(2)(b) was frisked subsequent to being handcuffed. PO Tucker further explained that he released § 87(2)(b) with summonses after it was determined at the stationhouse that there was no open warrant for § 87(2)(b) arrest (encl. F5-F6).

PO Rios stated that he only remembered the officers physically interacting with § 87(2)(b) during his arrest. PO Rios remembered that § 87(2)(b) was frisked incident to his arrest, immediately prior to being handcuffed. PO Rios described the arrest as subsequent to § 87(2)(b) refusal to provide his identification. PO Rios did not know whether § 87(2)(b) had an open warrant for his arrest (encl. G3-G4).

The warrant check print-out confirms that PO Tucker conducted a warrant check for § 87(2)(b) during the incident, which revealed an open warrant for an individual with the same name and age as § 87(2)(b) but with a different date of birth.

Although PO Rios indicated that § 87(2)(b) was arrested due to his failure to provide his identification, all other statements indicate that he was instead arrested due to an open warrant for his arrest after he provided his identification to the officers. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation D – Force: PO Kenny Tucker used pepper spray against § 87(2)(b)

It is undisputed that § 87(2)(b) was frisked by the time the officers attempted to place him inside the patrol car.

§ 87(2)(b) stated that he was first handcuffed, and that he then attempted to give some of his property, which consisted of currency, to § 87(2)(b) despite PO Tucker ordering him not to do so, and that PO Tucker then pepper-sprayed him. § 87(2)(b) explained that his property was initially inside one of his back pockets and stated, in his sworn statement, that he had the property in his hands when he was pepper-sprayed; however, he did not specify whether he had removed his hands from the pocket by that point. § 87(2)(b) also stated that he was pepper-sprayed as he was trying to give his property away to § 87(2)(b) who was approximately two feet away from him and was approaching him to retrieve the property. § 87(2)(b) alleged that PO Tucker pepper-sprayed him from just a few inches away from his face and in a continuous manner for approximately a minute. § 87(2)(b) explained in his phone statement that he was repeatedly informed that he could not give his property away, and that he was pepper-sprayed during the time that he was attempting to take his property out of his pocket and the officers were continuing to attempt to place him inside the patrol car (encl. E1-E4).

§ 87(2)(b) explained that PO Tucker handcuffed § 87(2)(b) who then asked why he was being arrested. § 87(2)(b) added that § 87(2)(b) then refused to be placed inside the patrol car by standing in a firm manner and holding his ground. § 87(2)(b) further added that PO Tucker then pepper-sprayed § 87(2)(b). § 87(2)(b) made no mention that § 87(2)(b) attempted to give his property away (encl. D).

PO Tucker stated that § 87(2)(b) resisted arrest by tensing his body, failing to place his hands behind his back when ordered to do so, screaming, and cursing. PO Tucker explained that he then pepper-sprayed § 87(2)(b) to obtain his compliance. However, PO Tucker later stated that he did not remember whether § 87(2)(b) was already in handcuffs when he was pepper-sprayed. PO Tucker then added that he pepper-sprayed § 87(2)(b) a second time as the officers attempted to place him inside the patrol car. PO Tucker explained that he pepper-sprayed § 87(2)(b) a second time because § 87(2)(b) resisted being placed inside the patrol car. PO Tucker explained that he pepper-sprayed § 87(2)(b) using two bursts each time. PO Tucker also explained that he wouldn't allow § 87(2)(b) to give his property away due to the risk that it becomes lost (encl. F5-F6).

PO Rios stated that § 87(2)(b) resisted arrest by refusing to place his hands behind his back when ordered to do so, cursing, yelling, pulling his hands and moving his body away from the officers, and flailing his arms. PO Rios further added that § 87(2)(b) may have pushed PO Tucker away. PO Rios added that PO Tucker then pepper-sprayed § 87(2)(b) once with a burst of less than two seconds, at which point the officers managed to handcuff him. PO Rios estimated that PO Tucker was less than a foot away from § 87(2)(b) during the struggle (encl. G3-G4).

According to Patrol Guide Procedure, 212-95, officers may use pepper-spray when they reasonably believe that it is necessary to effect an arrest of a resisting suspect, or to take an

emotionally disturbed person in custody. It also adds that pepper-spray “may be used in arrest or custodial restraint situations where physical presence and/or verbal commands have not been, or would not be, effective in overcoming physical resistance,” and that the pepper-spray should be discharged at a minimum distance of three feet with two-one second bursts. However, it further adds that officers are prohibited from pepper-spraying individuals who passively resist (encl. A1-A4).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation E – Abuse of Authority: PO Kenny Tucker arrested § 87(2)(b)

It is undisputed that § 87(2)(b) was first stopped for littering and then handcuffed and transported to the stationhouse subsequent to a warrant check. PO Tucker requested the search, via radio or phone, and the warrant search was conducted by PO Grant at the stationhouse using her tax registry number. It is also undisputed that the officers determined, at some point, that § 87(2)(b)

§ 87(2)(b) had no active warrant for his arrest. It is further undisputed that PO Tucker eventually released § 87(2)(b) with two summonses at the stationhouse instead of processing his arrest. Lastly, it is undisputed that the officers informed § 87(2)(b) that he had an open warrant for his arrest at the incident location.

PO Tucker stated that he requested a warrant check for § 87(2)(b) which revealed that he had an open warrant for his arrest. PO Tucker added that he eventually determined at the stationhouse that no open warrant existed for § 87(2)(b) and therefore released him with summonses (encl. F5-F6).

PO Rios described the arrest as subsequent to § 87(2)(b) refusal to provide his identification. PO Rios did not know whether § 87(2)(b) had an open warrant for his arrest (encl. G3-G4).

The warrant check print-out indicates that PO Grant conducted a warrant check for § 87(2)(b) around the time of his arrest. It also indicates that no open warrant for § 87(2)(b) existed, but that one existed for a person, who was born just a few days after § 87(2)(b) by the same name.

§ 87(2)(g)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Team: 3

Investigator:	_____	<u>Keyne Jean Villert</u>	_____
	Signature	Print	Date

Supervisor:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date